

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCOTT FETZER COMPANY,

Plaintiff,

v.

RAYMOND G. GEHRING d/b/a
NORTHEASTERN VACUUM CLEANER
COMPANY

Defendant

Civil Action No. 02-2917 (JKG)

PLAINTIFF SCOTT FETZER'S TRIAL MEMORANDUM

Pursuant to this Court's Order of May 12, 2003, plaintiff, The Scott Fetzer Company ("Scott Fetzer"), hereby respectfully submits its Trial Memorandum in the above-captioned matter against Defendant, Raymond G. Gehring d/b/a Northeastern Vacuum Cleaner Company ("Gehring")

A. PLAINTIFF SCOTT FETZER'S EXHIBIT LIST

1. Letter of September 14, 2001 from Robert P. Ducatman to Raymond Gehring
2. Letter of October 8, 2001 from Robert P. Ducatman to Raymond Gehring
3. Complaint
4. Proof of Service of Summons and Complaint
5. Answer
6. Certified copy of U.S. Trademark Registration No. 993,713
7. Certified copy of U.S. Trademark Registration No. 1,135,019
8. Certified copy of U.S. Trademark Registration No. 1,135,020
9. Certified copy of U.S. Trademark Registration No. 1,210,015
10. Certified copy of U.S. Trademark Registration No. 1,210,016
11. Certified copy of U.S. Trademark Registration No. 1,255,543
12. Certified copy of U.S. Trademark Registration No. 2,004,420
13. Certified copy of U.S. Trademark Registration No. 2,587,118
14. Kirby Distributor Agreement
15. Plaintiff Scott Fetzer's First Set of Interrogatories to Defendant
16. Plaintiff Scott Fetzer's First Set of Requests for Production to Defendant

- 17 Defendant's Responses to Interrogatories and Requests for Production
- 18 Letter of April 16, 2003 from Christina J. Moser to Raymond Gehring
- 19 Report of January 26, 2002 Investigation
- 20 Rebuilt Vacuum Information Sheet
- 21 Pricing Sheet for Rebuilt Kirby Vacuums
- 22 G5 Brochure with "KIRBY NORTHEASTERN" Sticker
- 23 Report of February 2, 2002 Investigation
- 24 Photograph of 1043 Cotton Street, View 1, taken Feb. 2, 2002
- 25 Photograph of 1043 Cotton Street, View 2, taken Feb. 2, 2002
- 26 Photograph of 1043 Cotton Street, View 3, taken Feb. 2, 2002
- 27 Report of April, 2003 Investigation
- 28 Photograph of 1043 Cotton Street, View 1, taken April 10, 2003
- 29 Photograph of 1043 Cotton Street, View 2, taken April 10, 2003
- 30 Photograph of 1043 Cotton Street, View 3, taken April 10, 2003
- 31 Letter of May 16, 2003, from Michael J. O'Reilly to Christina J. Moser regarding Verizon Documents and attached Affidavit (Verizon 001-003)
- 32 Year 2000 Verizon Contract (Verizon 004-011)

- 33 Year 2000 Copy Layout Sheet (Verizon 012-014)
- 34 Year 2000 Proofs (Verizon 015-018)
- 35 Year 2001 Contract (Verizon 019-023)
- 36 Correspondence (Verizon 024-027)
- 37 Customer Service Claim Notes (Verizon 028-031)
- 38 August 2000-2001 Pottstown Yellow Pages (Verizon 033-035)
- 39 August 2000-2001 Hamburg Yellow Pages (Verizon 036-038)
- 40 August 2000-2001 Reading Yellow Pages (Verizon 039-041)
- 41 August 1999-July 2000 Reading Yellow Pages (Verizon 042-044)
- 42 August 2001 Reading SuperPages (Verizon 045-047)
- 43 August 2002 Reading SuperPages (Verizon 048-050)
- 44 Internal Verizon Document Regarding 3-way Call (Verizon 032 & 051)
- 45 Defendant's Answer to Consent Decree

B. EXPERT WITNESSES

Scott Fetzer does not intend to introduce expert testimony.

C. EXPERT WITNESS QUALIFICATIONS

See above.

D. PLAINTIFF SCOTT FETZER'S WITNESS LIST

- 1 Raymond G. Gehring
Northeastern Vacuum Cleaner Company
1043 Cotton Street
Reading, Pennsylvania 19602

Subjects of testimony: Infringing activities of defendant; customer confusion regarding defendant's affiliation with Scott Fetzer; damages based on defendant's profits from infringing activities.

- 2 Robert G. Shumay
Vice President Consumer and Public Relations, IMD and Distribution
The Kirby Company
1920 West 114th Street
Cleveland, Ohio 44102

Subjects of testimony: Knowledge and experience regarding the value and use of Kirby trademarks; Kirby's prosecution and protection of its trademarks; Kirby's contractual relationships with authorized distributors; infringing activities of defendant; dilution caused by activities of defendant; and damage caused by defendant.

- 3 Arthur F. Tredinnick
Associate Investigative Services
3140-B, Suite 175
Tilghman Street
Allentown, PA 18104

Subjects of testimony: Preparation and maintenance of investigation reports.

4. Heather DelleDonne
Associate Investigative Services
3140-B, Suite 175
Tilghman Street
Allentown, PA 18104

Subjects of testimony: 2002 and 2003 investigations, evidence obtained therefrom and photographs taken at that time.

E. PLAINTIFF SCOTT FETZER'S STATEMENT OF DAMAGES

1. Monetary Damages: Plaintiff is not yet able to provide a computation of its monetary damages because it does not have all of the necessary documents and information to do so, because of defendant's failure to participate in discovery.

2. Injunctive Relief: Plaintiff is seeking to prohibit defendant's infringing activities and to restrain defendant from further dilution of Scott Fetzer's trademarks and servicemarks, in the manner described in Scott Fetzer's [Proposed] Injunction Order submitted concurrently with its Motion for Judgment.

3. Other Relief: To the extent applicable, plaintiff also intends to seek attorney's fees, treble damages and any other enhanced or punitive damages.

F. ANTICIPATED LEGAL/PROCEDURAL ISSUES

Based on Gehring's failure to produce any documents and his refusal to provide responses to written interrogatories, Scott Fetzer intends to seek the exclusion of testimony by Gehring, except testimony he is required to give if called as an adverse witness by Scott Fetzer, as well as all documentary evidence submitted by or on behalf of the defendant. Beyond this, Scott Fetzer does not anticipate, at this time, any significant and/or unique legal and procedural issues on which the court will be required to rule.

G. PARTIES

To the best of Scott Fetzer's knowledge, the name and addresses of the parties have not changed since the filing of the Complaint. They are:

1. Defendant:

Raymond G. Gehring
d/b/a Northeastern Vacuum Cleaner Company
1043 Cotton Street
Reading, Pennsylvania 19602

Defendant's home address is believed to be: 1037 Cotton Street, Reading
Pennsylvania 19602.

2. Plaintiff:

The Scott Fetzer Company
28800 Clemens Road, Westlake, Ohio 44145.

H. TRIAL COUNSEL

Trial counsel for Scott Fetzer is:

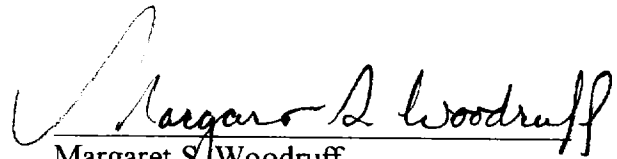
Robert P. Ducatman (Ohio Bar No. 0003571), admitted *pro hac vice* in this matter
Christina J. Moser (Ohio Bar No. 0074817), admitted *pro hac vice* in this matter
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
Ph: (216) 586-3939
Fx: (216) 579-0212

I. **OTHER MATTERS**

It is anticipated that, should Scott Fetzer choose to call Gehring as a hostile witness, he will be at best uncooperative, which might cause unavoidable delay.

Dated June 13, 2003

Respectfully submitted,



Margaret S. Woodruff
(Pennsylvania Bar No. 26010)
SCHNADER HARRISON SEGAL & LEWIS
Suite 3600, 1600 Market Street
Philadelphia, PA 19103-7286

admitted *pro hac vice*:

Robert P. Ducatman
(Ohio Bar No. 0003571)
rducatman@jonesday.com

Christina J. Moser
(Ohio Bar No. 0074817)
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Counsel for Plaintiff
THE SCOTT FETZER COMPANY

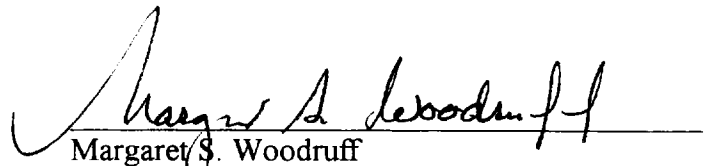
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing PLAINTIFF SCOTT FETZER'S TRIAL MEMORANDUM was served via U.S. Mail this 13th day of June, 2003, upon:

Raymond G. Gehring
Northeastern Vacuum Cleaner Company
1043 Cotton Street
Reading, Pennsylvania 19602

and

Raymond G. Gehring
1037 Cotton Street
Reading, Pennsylvania 19602


Margaret S. Woodruff
Attorney for Plaintiff
The Scott Fetzer Company